

SETTLEMENT AGREEMENT BY AND BETWEEN THE
MISSOURI BOARD OF REGISTRATION FOR THE HEALING ARTS AND
DAVID E. THOMPSON, M.D.

Comes now David E. Thompson, M.D., ("Licensee") and the State Board of Registration for the Healing Arts ("the Board") and enter into this Agreement for the purpose of resolving the question of whether Licensee's license as a physician and surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo 2000.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided to Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against

Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts ("the Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Licensee is licensed by the Board as a physician and surgeon, license number R9393. Licensee's license is current and active, and was so at all times relevant herein.

3. On or about June 26, 1997, Licensee ordered Pondimin 20 mg., Kraftobese 18.75 mg., and Kraftobese 37.5 mg., from Kraft Pharmaceutical Company ("Kraft"), Oreland, Pennsylvania.

4. Pursuant to state and federal law, Pondimin and Kraftobese are controlled substances.

5. Licensee ordered the controlled substances from Kraft and requested delivery to an unregistered location. Upon delivery of the controlled substances to the unregistered location - New Image Body Clinique ("Clinique") - the controlled substances were dispensed in non-approved containers.

6. Licensee's above-referenced conduct is a violation of § 195.252, which states in pertinent part:

1. It is unlawful for any person:

(1) Who is subject to the provisions of sections 195.005 to 195.198 to distribute or dispense a controlled substance in violation of section 195.030.

....

7. Licensee's conduct violates 4 CSR 150-5.020(3) and (4) which states in pertinent part:

(3) Physicians who elect to dispense medication must comply with the regulations governing the types of container that may be used to repackage prescription drugs as specified by federal law or rule. . . .

8. Licensee's conduct is a violation of 19 CSR 30-1.066, which states in relevant part:

(1) An individual practitioner who dispenses controlled substances shall –

- (B) Package all controlled substances. . . in compliance with the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476;
- (C) Permanently affix a label to the exterior of the drug container which includes: the date, the name and address of the dispensing practitioner, the name of the patient, directions for use, and the exact name and strength of the drug dispensed for all controlled substances dispensed;
- (D) Dispense only to individuals with whom the practitioner has established and documented a practitioner/patient relationship. An individual practitioner shall not dispense under the order of another practitioner not practicing at that location.

JOINT PROPOSED CONCLUSIONS OF LAW

1. Based on the foregoing, Licensee's license is subject to disciplinary action pursuant to section 334.100.2(4), (6) and (13), RSMo 2000, which states in pertinent part:
2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

- (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter . . .

. . . .

- (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

. . . .

- (13) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

. . . .

2. Licensee's conduct, as established by the foregoing facts, falls within the intendments of § 334.100.2(4), (6) and (13), RSMo 2000.

3. Cause exists for Board to take disciplinary action against Licensee's license under Section 334.100.2(4), (6) and (13), RSMo 2000.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of Section 621.110, RSMo 2000. This Agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The license to practice the healing arts, License No. R9393, issued to Licensee is hereby PUBLICLY REPRIMANDED.

B. No additional order shall be entered by this Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo.

C. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

D. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

BOARD

David E. Thompson ^{24 11}
David E. Thompson, M.D. date
8/4/02

Tina Steinman 8/15/02
Tina Steinman date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

Loretta Schouten
Loretta Schouten
Assistant Attorney General
Missouri Bar No. 52290

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Post Office Box 899
Jefferson City, MO 65102
(573) 751-4087

Attorneys for Board

EFFECTIVE THIS 15 DAY OF August, 2002.